

IN THE MATTER OF	:	BEFORE THE
TRUSTEES OF STATE BOARD	:	HOWARD COUNTY
OF CHURCH OF GOD	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 08-002C

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DECISION AND ORDER

On March 31, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of the Trustees of State Board of Church of God for a Charitable or Philanthropic Institution: Offices and Educational Programs conditional use in an R-20 (Residential: Single) Zoning District, filed pursuant to Section 131.N.12 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Robert Fila, Esquire, represented the Petitioner. Donald Martin and Joseph Rutter testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The 27-acre, generally wedge shaped subject property is located in the 5th Election District south of the current terminus of Long View Road approximately 400 feet south of Rivers Edge

Road and has a street address of 7340 Long View Road. It is referenced on Tax Map 41, Grid 11, as Parcel 179 (the "Property")

2. A private driveway at the terminus of Rivers Edge Road provides access to the Property. To the driveway entrance's south and southeast are three single-family detached dwellings fronting on a separate driveway and court. The private driveway runs in a southwesterly direction past these dwellings through a wooded area and splits into two interior driveways. One interior driveway runs southeast to a main parking lot and the existing headquarters office building, which has occupied the site for about 50 years. The other runs in a more southwesterly, downhill direction and leads to several former camp buildings. These camp buildings include a former cafeteria building, a former bathhouse, and two former dormitories. A single-family detached dwelling northwest of the bathhouse is currently occupied. A noise wall runs partly along the area of the proposed parking lot.

3. The Property's topography drops about 42 feet in elevation between the front entrance and the former cafeteria building, beyond which the parcel is relatively level.

4. Vicinal Properties. The Property adjoins the west side of Route 29 and the Middle Patuxent River is its southwest boundary. Adjoining properties to the west and north are also zoned R-20. To the Property's northwest is the Riverside Subdivision, whose lots front on Riverside Court. The properties north of the Property's private entrance are improved with single-family detached dwellings fronting on Long View Road. Across the Middle Patuxent River, the area is zoned PEC (Planned Employment Center).

5. Roads. Long View Road has about 35 feet of paving within an existing 50-foot right of way. The posted speed limit is 25 miles per hour.

6. The Property is served by public water and sewer.

7. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Residential Areas." The General Plan Transportation Map depicts Long View Road as a Local Road.

8. The three existing dwellings in the northeastern section of Parcel 179 were apparently developed as part of the Hearthstone at Riverside Subdivision (F-F-05-11). What is apparently Lot 2 of this subdivision is improved by one of the above noted two-story single-family detached dwellings fronting on the separate driveway and court.

9. The County is currently reviewing the further resubdivision of Parcel 179 as a single-family residential development.

10. The Petitioner is proposing to construct a new building on Lot 2 of the Hearthstone at Riverside Subdivision for the church's administrative headquarters, meetings, educational programs and occasional classes or seminars. Lot 2 would be enlarged by 1,220-square feet through the transfer by resubdivision of a part of Lot 1, which would increase the size of Lot 2 to 1.22 acres (the "Site"). The petition states the normal hours of operation are 8:00 a.m. to 5:30 p.m. Monday-Thursday. Occasional classes and seminars for 15-20 persons would occur in the evening or on Saturday between 9:00 a.m. and 3:00 p.m. The current facility, which would be demolished, employs 10-15 employees and a few more would be added over the years.

The office building will be situated in the southwesterly corner of the Site. The proposed 60-foot wide by 50-foot deep office building would have two stories and a basement, which the petition states may be used for storage. The building's front elevation (Petitioner's Exhibit 2) depicts a two-story, seven-bay, masonry structure with a covered central entry and what appears to be a pitched roof with two dormer windows on each side of the front façade. The rear building elevation submitted with the petition, and as shown on the rear elevation submitted as Petitioner's Exhibit 3, depict two entrance doorways on the southeastern (right side facing the back facade) side of the basement level. The rear elevation plan submitted with the petition depicts what appears to be a garage door or loading area opening on the basement level's northwestern (left side facing the back facade) side. The floor plans submitted with the petition states the basement does not count as a

floor. These plans also note the first and second floors are each 3,200 square feet in area. According to the floor plans, the first floor would include eight individual offices and a large open space office area. The second story will include four offices, a conference room, and a boardroom. Depicted on the northwesterly (right side facing the front) façade is an exterior stairwell accessed from the basement level. After rising from the basement level, the stairway runs horizontally with the first floor and then up to the second floor. A portion of the stairway appears to be covered. The rear elevation included in the petition differs from the rear elevation submitted as Applicant's Exhibit 3. The former depicts several additional windows, while the latter depicts a second exterior stairway zigzagging to the second floor.

Access to the building would be gained by the use and continuation of the existing driveway for Lot 2. According to the Conditional Use Plan submitted with the petition and dated October 2007, this driveway would end in a 20-space parking lot with one disabled parking space. The Petitioner proposes to light the parking lot with standard BGE ornamental light. According to the petition, shielding will be provided as needed.

11. The Petitioner is also requesting that the 50-foot conditional use setback be reduced, as discussed below, to 30 feet along the south and west property lines. The Conditional Use Plan thus depicts the office building as 30 feet from Proposed Lots 9, 6, and 5, and about 40 feet from Proposed Lot 4 of the subdivision under County review. The Plan also shows the parking lot situated 20 feet from the parking lot's southern edge and about 10 feet or less from the existing dwelling, which will remain. The petition states that the requested reduction is to provide a similar appearance to the residential units in the area because "[e]xceptionally large setbacks would isolate it and make it appear as a separate use not related to the community."

12. Mr. Martin testified that 12-15 persons would attend the educational programs, which would operate at night and on weekends.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. General Plan. Section 131.B requires me to evaluate the proposed conditional use's harmony with the land uses and policies indicated in the Howard County General Plan for the R-20 zone. In evaluating a plan under this standard, I must consider (a) the nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and (b) if a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.

In this case, the Howard County General Plan designates the area in which the Property is located as a "Residential Land Use." Long View Road is a Local Road that would apparently be extended for further resubdivision of Parcel 179 currently under County review. The proposed use of the Property as a residence and business office is a continuation of the Petitioner's longstanding institutional use of the Property.

As discussed below, absent anything in the record to support my authorization of a reduction in the 50-foot conditional use setback, I am compelled to conclude the proposed use depicted in the Conditional Use Plan would result in an intensity and scale of uses on the Site to a greater degree than ordinarily associated with a Charitable or Philanthropic Institutional office building. Consequently, I must further conclude the proposed size of the site in relation to the nature and greater intensity of the use, together with the proposed use's close proximity to the existing dwelling is not in harmony with the land uses and policies of General Plan for the district and inappropriate. The proposed use does not accord with Section 131.B.1.a.

2. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use will have adverse effects on vicinal properties beyond those ordinarily associated with a charitable or philanthropic office and education building in an R-20 zoning district. Unlike Section 131.B.1, which concerns the proposed use's harmony or compatibility with the *General Plan*, compatibility with the *neighborhood* is measured under Section 131.B.2's "adverse effect" criterion. In evaluating the proposed use's compatibility with the neighborhood under the "adverse effect" standard, I must consider the following.

- a. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.
- b. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.
- c. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.
- d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

When assessing a proposed conditional use under these criteria, we must begin with the realization that virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed charitable or philanthropic institutional office and education building has adverse effects in an R-20 zone. The proper question is whether those adverse effects are greater at the proposed Site than they would be generally elsewhere within the R-20 district. For the reasons stated below, I conclude the preponderance of

evidence in the record establishes that this proposed use will have adverse effects on vicinal properties beyond those ordinarily associated with a charitable or philanthropic institutional office and educational building in the R-20 District.

a. Physical Conditions. The Petitioner proposes to construct an office/educational building 30 feet from Proposed Lots 9, 6, and 5 and some 40 feet from Proposed Lot 4 of the residential resubdivision under County review. The Petitioner also proposes to locate the parking lot some 20 feet from Proposed Lot 9 and about 10 feet from the existing dwelling on the Site. These variations from Section 131.N.12.f's 50-foot building and parking area setback are prima facie evidence that noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.

The Petitioner's stated reason for these setbacks is to "provide a similar appearance to the residential units in the area because "[e]xceptionally large setbacks would isolate it and make it appear as a separate use not related to the community." I find this rationale disingenuous. The 50-foot use setback required by Section 131.N.12.f (the reduction of which as permitted by the Hearing Authority is discussed below) is a legislatively determined presumption that the use, while permitted under certain conditions, is *not* similar to area residential uses and is a separate use needing to be buffered. The Petitioner's rationale would have me impermissibly substitute the county legislature's setback standard for its own. Additionally, the record lacks any substantive basis as to how a lesser setback for the building would effect a similar appearance and use, an assessment that is critically hampered by the absence of any footprints or building restriction lines indicating the proposed location of the dwellings in the residential resubdivision under review.

In this regard, the TSR comments that the building's stated 6,000-square feet of floor space may be underestimated, inferring the use may actually be larger in scale and intensity than represented by the petition and Conditional Use Plan. The record supports this concern. The floor plans

submitted with the drawing note the first and second floors are each 3,200 square feet, not 3000 feet as stated in the petition, and state the basement is not part of the calculated square footage. However, the building elevations depict what appears to be a basement garage or loading door and basement access and the petition states the basement may be used for storage. Even assuming only 6,000 square feet for the use, only 19 parking spaces are shown on the plan, not 20, the number required.

Based on the record before me, I am compelled to conclude here that the proposed use, with the proposed setbacks, will necessarily generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions beyond those inherently associated with charitable or philanthropic office/educational building in an R-20 zone, contrary to Section 131.B.2.a.

b. Structures and Landscaping. Based on the evidence of record I conclude the Petitioner has not met its burden of demonstrating that the location, nature and height of the proposed structure will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones, as is required by to Section 131.B.2.b. As the TSR observes, the perimeter landscaping information simply shows general landscaping symbols. The record thus lacks any supporting evidence as to how this landscaping supports this requirement. Importantly, the Conditional Use Plan does not depict, even in a general way, the location of the residences of the resubdivision under review in relation to the proposed building and how the landscaping ensures that their development would not be hindered by the use. Lastly, the Conditional Use Plan's depiction of two exterior stairways that will necessarily face adjoining property are, in my view, a potential aspect of the proposed use that could discourage the use of adjacent land and structures. Nothing in the petition provides supporting information as to how the landscape plan will mitigate the use of adjacent land and structures.

c. Parking areas. The Conditional Use Plan depicts 19 spaces and 20 are required for the building's stated 6,000-square feet. The petition states only two floors will be part of the use, but this appears to be contradicted by the building elevations showing a basement which appears to be part of the use. The petition also states the basement may be used for storage. The TSR expresses concern that the depiction of dormer windows on the floor plans implies additional floor space and is unable to conclude that the parking area will be of adequate size for the proposed use. No loading areas are expressly proposed, but a building elevation depicts a vehicular entry/door in the basement. I conclude the Petitioner has not met its burden on demonstrating compliance with Section 131.B.2.c.

d. Access. The record contains no evidence that the ingress and egress drive will not provide safe access with adequate site distance. The proposed use complies with Section 131.B.2.d.

II. Specific Criteria for Charitable or Philanthropic Institutions: Office and Educational Programs (Section 131.N.12)

a. The minimum lot size shall be 40,000 square feet.

The proposed lot size is 53,000 square feet, in accordance with Section 131.N.12.a.

b. The facility shall be limited to office functions and areas for meetings and educational programs related to the organization's primary purpose. The Hearing Authority must specify the allowed capacity and frequency of educational programs.

The facility would be limited to office functions and evening and weekend educational programs attended by up to 20 persons, in accordance with Section 131.N.12.b. The maximum number of persons attending the educational programs shall be 20 and these programs may occur on weekday evenings only between 5:30 p.m. and 9:00 p.m. and on weekends between 9:00 a.m. and 3:00 p.m.

c. Outdoor uses are limited to necessary parking and access, with the exception of nonprofit organizations whose primary purpose is environmental conservation, in which case

the use may include outdoor areas used to demonstrate principals and methods of environmental conservation.

The outdoor uses are limited to the parking lot and driveway access; accordingly, the petition complies with Section 131.N.12.c.

d. All parking areas and outdoor activity areas shall be screened from surrounding properties and roads by landscaping or other appropriate means and located and designed to shield residential property from noise or nuisance.

The preponderance of evidence, and for the reasons discussed above, leads me to conclude the Petitioner has not demonstrated that the proposed building will be adequately located and screened from the proposed residential properties and from the on-Site dwelling and designed to shield residential property from noise or nuisance. The proposed landscaping is too minimally depicted on the plan to discern whether it will shield surrounding residential property from the proposed building, an evaluation that is hampered by the fact that the proposed residences to be created through resubdivision are not depicted on the Conditional Use Plan.

e. The design of new structures or additions to existing structures shall be compatible in scale and character with residential development in the vicinity, as demonstrated by architectural elevations or renderings submitted with the petition.

For the same reasons discussed in reference to Section 131.N.12.d, the Petitioner has not demonstrated how the new structures will be compatible with vicinal residential development. Although the Petitioner submitted architectural elevations, I have nothing to compare these elevations with to make the necessary determination. The petition does not comply with 131.N.12.e.

f. Buildings, parking areas and outdoor activity areas shall be at least 50 feet from adjoining residentially zoned properties other than public road right-of-ways. The Hearing Authority may reduce this setback to no less than 20 feet or the minimum setback required by the zoning district, whichever is greater, if:

(1) The adjoining land is committed to a long term institutional or open space use that provides an equivalent or better buffer for vicinal residential development; or

(2) The petition includes detailed plans for screening, consisting of a combination of a solid fence or wall and landscaping, or an equivalent combinations, that

presents an attractive and effective buffer for neighboring residential properties.

Because the adjoining land is not committed to a long-term institutional use, the petition must demonstrate compliance with Section 31.N.12.f(2). The TSR concludes the proposed use could meet the 50-foot setback because the residential resubdivision of Parcel 179 is still in review and may be modified to establish the area of the Site to comply with the 50-foot setback. In this regard, the TSR also observes that meeting this setback would cause the proposed use to comply with the related criteria in the general standards for conditional uses discussed above, with which it does not now comply due to the reduced setback.¹

I agree. Absent sufficient information in the petition to evaluate how the proposed screening would present an attractive and effective buffer for neighboring properties, I am unable to authorize a reduced setback. Therefore, as a condition of approval, the Petitioner will be required to revise the area of the Site to comply with the 50-foot setback. This, I believe, will also permit the Petitioner to denote the building's total square footage comprising the use, to revise the parking area accordingly, and to provide an adequate buffer between the proposed building and parking area use and the adjoining residences within the subdivision in review and between the use's parking area and the dwelling on the site.

g. At least 20 percent of the area within the building envelope shall be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way of the zoning district.

The proposed green space area within the building envelope is 9,097 square feet or 39 percent, in accordance with Section 31.N.12.g.

¹ This may result in a reduction in lots, which in the R-20 zone must be at least 60 feet wide at the building restriction line and 20,000 square feet in area.

ORDER

Based upon the foregoing, it is this **21st day of April 2008**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of the Trustees of State Board of Church of God for a Charitable or Philanthropic Institution: Offices and Educational Programs conditional use in an R-20 (Residential: Single) Zoning District, is **GRANTED**.

Provided, however, that:

1. The area of the Site shall be revised at the Site Development Plan stage to comply with the 50-foot setback required by Section 131.N.12.f along the revised Site's lot lines. A lesser reduction in this 50-foot setback is not permitted.
2. The square footage of the building to be utilized by the office/educational building shall be stated in the Site Development Plan and the number of parking spaces shall be adjusted accordingly.
3. The hours of operation for the educational programs are 5:30 p.m. to 9:00 p.m. weekdays and 9:00 a.m. to 3:00 p.m. on weekends.
4. A maximum number of 20 persons may attend the educational programs.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed:

4/28/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.